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THE
CASE

OF THE

City of DUBLIN,

In Relation to the Election of the Lord-
Mayor and Sheriffs of the said City.

THE City of Dublin was Incorporated
by the Name of Mayor, Bailiffs, Com-
mons and Citizens of Dublin.

In the Reign of Edward the Sixth;
the City was made a County of a City, and the
Bailiffs turn'd into Sheriffs.

By the Charters of the City, the Mayor, Bai-
liffs, Commons and Citizens, afterwards the Mayor,
Sheriffs, Commons and Citizens were annually to
Elect such of the Aldermen to be Mayor, as they
should think most fit, and in the like manner to
Elect two Bailiffs, afterwards, Sheriffs, out of
the Commons.

The Election of Mayor and Sheriffs continued
in the Corporate Body of the City of Dublin;
till the Restauration of King Charles the Second.

That upon the Settlement of Ireland, after
the horrid Rebellion in 1641, it was thought
necessary for the preventing the Election of
Magistrates in Cities and Corporate Towns, by
the

the Influence or Interest of *Papists*, to give a Power to the Government and Council to Approve, or Disprove Persons who should be Elected, into those Offices, as appears by the preamble and Recitals in the Act of Settlement, which are in the Words following, viz. *Whereas, An unnatural Insurrection did break forth upon the 23d of October 1641, and Manifested it self by the Murder and Destruction of many Thousand Loyal Subjects, and afterwards became almost a National Rebellion of the Irish papists, to the Destruction of the English and Protestants of this Kingdom. And in page 576 in the Irish Statute, the said Act recites, That for the Prevention of all future rebellions, and that the good Subjects of Ireland may be secured against all Insurrections and Attempts for the Time to come. It's Enacted, That the Chief Governor and Council, during the Space of Seven Years, from May 1662; should make Orders for Planting the Kingdom with Protestants. And for the better Regulation of Cities and Corporations, and Electing Magistrates there, which Rules or Orders so to be made, shou'd be as good as if the same had been Established by Act of Parliament. That by the Act of Explanation, The Period of Time for making those Rules, was farther Enlarg'd for Seven Years.*

That pursuant to the power given by the said Acts to the Government and Council of Ireland, the Lord Lieutenant and Council in the Year, 1672. Made and Established Rules for Regulating the Corporations of the City of Dublin, and the Electing of Magistrates and Officers there: Whereby 'tis Ordered and Enacted among other things, in the Words following, viz. That

‘ That the Election of the Lord Mayor, Sheriffs and Treasurer of the City of Dublin, shall be for ever hereafter only by the Lord-Mayor and Aldermen of the said City, there being always Eight Aldermen at the least present at such Election. And that no other person or persons whatsoever shall at any time hereafter have any Vote in the Election of the said Officers.

‘ That the said Officers when Elected shall be approv’d by the Government and Council, and if not Approv’d within Ten Days after, their Names shall be presented to the Government and Council, then and in such Case the Corporation is to proceed to a New Election, &c.

That at Easter Assembly, 1709. Alderman Constantine, Alderman Forrest, and Alderman Eccles, were put in Election for the Mayoralty of the said City, and the Majority of Voices on a fair Election, fell indisputably on Alderman Forrest, the Board having good Reasons for not Electing Alderman Constantine.

It was nevertheless, moved by an Alderman at the Board, that Alderman Constantine might be admitted to go above the Cushion, and to wear Scarlet, as if he had been Elected, and Served in the Mayoralty; to which it was Answer’d, That such a Favour was not to be Granted, until Alderman Constantine made it his Request: Whereupon Alderman Constantine Rising from his Chair, said; Gentlemen, I make it my Request; which being granted him by the Board, He replied; and said; Gentlemen, I thank you. And thereupon the following Order was made, and

and entered in the Monday Book; during the Sitting of the Assembly, and Signed by the Lord-Mayor, and Aldermen, viz.

By the Lord-Mayor and Court of Aldermen of the City of Dublin, the Sixth of May, 1709.

Alderman Charles Forrest is Elected and Chosen to serve in the Office of Mayoralty or Chief Magistrate of this City for the next Ensuing Year, to Commence at next *Michaelmas*, and Mr. Joseph Kane and Mr. Nathaniel Shaw, are Elected Sheriffs, for the said Year.

And it is also Ordered by the unanimous Consent of the Lord-Mayor and Board of Aldermen, that Alderman Robert Constantine be, and is hereby Admitted to pass above the Cushion, and to wear a Scarlet Gown.

<i>W. Fownes, Lord-Mayor.</i>	<i>William Gibbons;</i>
<i>John Rogerson,</i>	<i>John Pearson,</i>
<i>Thomas Quin,</i>	<i>John Eccles,</i>
<i>Samuel Walton,</i>	<i>Samuel Cooke;</i>
<i>John Sloyte,</i>	<i>Ralph Gore.</i>

Alderman Constantine soon afterwards being advised or Inclined to apply to the Council-Board, thought fit to petition the Government and Council against the Approbation of Alderman Forrest, a Junior Alderman to the then petitioner. Nevertheless the Government and Council approved Alderman Forrest's Election, Alderman Constantine in his petition not having so much as alledged any Irregularity in the Election, other than the not choosing him, as being a Senior Alderman to Alderman Forrest.

That

That in the Summer following Alderman Forrest Dying, Alderman *Page* who formerly serv'd in the Mayoralty was Elected, and approved as the new Rules directed.

That at *Easter* Assembly 1710, Alderman Eccles, Alderman Barlow, and Alderman *Cooke*, were put in Election, and Alderman Eccles being Elected, was afterwards approved by the Government.

That Alderman *Constantine* did not then so much as desire to be put in *Election* nor give the least Intimation to the Board, that he insisted on being *Elected*, but on the contrary took his Station several times as an Alderman admitted above the *Cushion*, by taking place of Alderman Eccles, the Elected and Approved Lord-Mayor.

It was thought after two *Elections* of Lord-Mayors, and a *Rejection* by the Government and Council of Alderman *Constantine's* Petition in 1709, That his former pretensions to the Mayoralty were at an End; Nevertheless Alderman *Constantine* at the last *Easter* Assembly, thought fit to Revive his former Pretensions, and finding Alderman Barlow was Elected Lord-Mayor for the Year 1711, and as such certified to the Government and Council; Alderman *Constantine* petitioned them to hear him by his Council before they did approve Alderman Barlow's Election; And in his Petition sets forth the same Matters he had formerly laid before the Council Board, viz. That he ought of Right to have been chosen into the Mayoralty in the Year 1709, he being the Eldest Alderman, who had not been Lord-Mayor of the City.

Where:

Whereupon the Lords Justices and Council; made an Order, Requiring the Lord Mayor and Aldermen to put in an Answer to the said Petition, who in Obedience to their Excellencies and Lordships Order, put in their Answer, and therein, and at the hearing the Cause Insisted: That by the New Rules the Board of Aldermen had a Right to Elect whom they thought most fit of their Brethren the Aldermen, to the Mayoralty of the said City; and that there neither was, nor could be an Immemorial or Uninterrupted Usage in the said City to Elect the Senior Alderman below the *Cushion* into the Mayoralty, for that the New Rules which were made in 1672, pursuant to an Act of Parliament, first gave the Lord-Mayor and Table of Aldermen Exclusive of all other Citizens, the Right of Electing the Lord-Mayor, out of the Aldermen, And that, in General Terms, without any Restriction or Relation to any former Manner of Electing, so that no Usage since, if any such had been, would create a prescriptible or other Right to Restrain their Right or Freedom of Election, which by the New Rules was Divested out of the corporate Body of the City, and Vested in General Terms in the Board of Aldermen, without any Restriction or Relation to any former Method of Electing. That the Lord-Mayor and Aldermen being only a part of the aggregate Body of the City, and not a corporate Body of themselves, it was conceived they were not under the Obligations of any former By-Laws, made by the corporate Body of the City, whilst the Right of Election Remained in them, whereby the

the Election of Mayors was or might have been Restrained or Limited.

It appeared by the Entries of the City Books and papers produced on the aforesaid Hearing, before the late Lords Justices and Council, that immediately after the making the aforesaid New Rules, that Alderman Dee who formerly serv'd as Mayor, was again Elected Mayor, whereby the Senior Alderman below the Cushion, was for that Year post-poned.

That Alderman Jones was Senior Alderman to Sir Joshua Allen, and to Sir Francis Brewster, yet each of them were Elected Lord-Mayors, viz. Sir Joshua Allen in 1673, and Brewster 1674, and Alderman Jones (tho' put in Election) was post-poned and Rejected.

Alderman Bennet was Senior to Alderman Lover, and to Alderman John Smith, yet Lover was preferred to Benner, and Elected Lord-Mayor in 1676, and Succeeded by Alderman John Smith a Junior Alderman to Alderman Bennet, tho' Alderman Bennet was put in Election.

In 1675 Alderman William Smith was again Elected Lord-Mayor, and the next in turn in all these Instances Post-pon'd, without any saving to any Right of Succession of the next Senior Alderman.

Sir John Rogerfon served as Lord-Mayor since the Revolution, before his immediate Senior Alderman Blackball, which Election was carried only by a single Vote for Sir John Rogerfon, as appears by the Poll-Paper of that Election, yet the Government and Council were nevertheless pleased

pleased to Confirm Sir John Rogerfen in that Office.

That the Lords Justices and Council having ordered that Alderman Constantine or his Agent should have Access to the City Books and Charters, they in turning over some of the Old Books in the Tholsel-Office, found in an Old Paper Book an entry of a By-Law in the Year 1615, that no Man should be Mayor two Years together. One other Entry of a By-Law, that every Alderman according to his Antientie, should keep his turn for bearing the Charge of the Mayoralty, another entry of a By-Law in the 5th of Philip and Mary, Enacting, that every Mayor should be Elected Master of the Trinity Guild the next Year after his Mayoralty.

These By-Laws (tho' not heard of in the City of Dublin for an Age past, yet were insisted on by Mr. Butler and other the council against the City who urged that the next in Station had a Right to be Elected by Virtue of these By-Laws.

It was offered and proved in behalf of the City, that those By-Laws were a long time disused in the City.

That no Mayor in the Memory of Man was Elected Master of Trinity Guild the Year after his Mayoralty.

That the same Man had served two Years successively in the Mayoralty, as well before as since the making the New Rules, and before and since the late Revolution.

That the next in Succession in the several Instances above mentioned was post-pon'd, and a Junior Alderman approved by the Government and

and Council tho' Elected before his Immediate Senior Alderman. So that these Obsolete Sleeping By-Laws cou'd have no Influence on the present Case.

That admitting those Entries of By-Laws were Evidence of such By-Laws, yet they neither did nor could controul the Power of a Subsequent Act of Parliament, which, by the New Rules took away the Right of Election, that was in the corporate Body of the City, who made those By-Laws, and created a New Power in the Board of Aldermen and Lord-Mayor to Elect Generally without Restraining them to any former mode or particular Manner of Electing.

Council on both sides being withdrawn, Alderman *Constantine* at length obtain'd the end of his Petition, which was the Disapprobation of Alderman Barlow's Election.

The Lord-Mayor and Aldermen being present at the hearing, and it appearing to them that the Council against the City owned they had no Objection to the Loyalty or Sufficiency of Alderman Barlow, but Insisted on the aforesaid By-Laws, which as they alledged Confined the Electors to choose the next in Station.

The Lord-Mayor by the Advice of the Aldermen, in a few Days after, called an Assembly of the City; whereupon the Commons preferred a Petition to the Assembly in the following Words, viz.

To the Right Honourable the Lord-Mayor, Sheriffs, Commons, and Citizens of the city of Dublin.

The

The Humble Petition of *certain of the
COMMONS.

Sheweth,

WHereas several Antient By-Laws made in this city, when Popish Aldermen and Freemen were admitted to the Government thereof, have on a late Occasion been produced as Evidence against the Freedom of Elections in this city. And, whereas great confusion, and various Disputes may arise in this city, shou'd such Antiquated By-Laws at this Distance of Time be revived amongst us.

We do therefore pray, that the Annexed By-Law or Ordinances to repeal the same, do receive the Sanction of this Assembly, and be and remain a By-Law of this city.

And they will Pray, &c.

That the said Assembly for avoiding all Disputes that might arise on pretence of the said By-Laws continuing in Force, did Repeal the same in one of the fullest Assemblies of the *Commons* as well as *Aldermen*, as hath been known at any time in the city of Dublin.

That after the Repeal of the said By-Laws, the Lord-Mayor and Aldermen proceeded to an Election of a Lord-Mayor and Sheriffs; and in Order to leave Alderman *Constance* without any ground of complaint; they did at his Request vacate the Order, whereby he was put above the cushion, and then they gave him a second Opportunity of being Elected into the Mayoralty, in case his Brethren the Aldermen shou'd think him the

fittest Person that shou'd be presented to their choice.

Alderman Constantine tho' the first Person put in Election; yet lost the same a second time by a great Majority of Voices; and Alderman Barlow was Re-Elected, in regard the By-Law under which Ald. Constantine pretended to a Right of being Elected, was previous to that Election Repealed. Alderman Barlow's Election was certified to the Government and Council, in the following Words, viz.

To their Excellencies the Lords Justices, and the Right Honourable the Lords and Others of Her Majesty's most Honourable Privy-Council of Ireland.

The certificate of the Lord-Mayor and Aldermen of the city of Dublin, of the Election of a Lord-Mayor and Sheriffs of the said city for the ensuing Year.

May it please Your Excellencies and Lordships!

WE having Unanimously Elected at our last Easter Assembly Alderman James Barlow Lord Mayor, Mr. Henry Glegg and Mr. Thomas Sommervill Sheriffs for the ensuing Year, made a Return of the said Elections to Your Excellencies and Lordships: Whereupon Alderman Robert Constantine Petitioned Your Excellencies and Lordships to be Heard by his Council, before You proceeded to the Approbation of the Election of the said Alderman Barlow.

That the Council for Alderman Constantine having made no Objection to the Loyalty or Sufficiency of Alderman Barlow, Insisted on certain Antient By-laws, Whereby it was Enacted, ' That ever Alderman shou'd keep his Turn for bearing the charge of the Mayoral-

is according to his Antientie, And that the Order of Succession should be observed in such Elections: Which By Laws were not lookt on to have been of any Force since the making the New Rules. Nevertheless to avoid all Doubts that might arise thereon, the severall By Laws relating to the Election of Mayors of this City, were amongst other Things in a full Assembly of the said Lord Mayor, Sheriffs commons and Citizens Repealed. And afterwards We the Lord Mayor and Aldermen proceeded to a New Election of a Lord Mayor and Sheriffs; the Time for Approving on our last Return being Expired: And having put Alderman Robert Constantine in Election, together with Alderman James Barlow, and Alderman Samuel Cooke; The choice by a great Majority of Voices fell on Alderman Barlow, who was thereby duly Elected Lord-Mayor of this City for one Year, to commence from Michaelmas next, pursuant to the Rules, Orders and Directions made and Established by the Lord-Lieutenant and Council of this Kingdom the Twenty Fourth Day of September, 1672. founded on a Clause in the Act of Settlement for Regulating the Elections of Magistrates in Cities and corporate Towns in this Kingdom: And we did pursuant to the said Rules, then and there Elect Mr. Henry Glegg, and Mr. Thomas Somervill, Sheriffs of the said City, during the time aforesaid. All which we certify, and humbly present our aforesaid Elections to Your Excellencies and Lordships for your Approbation. Dated this 15th Day of May 1711.

John Eccles, Lord-Mayor. John Rogerson. Tho. Quin. John Page, Samuel Walton, Ben. Burton. J. Pearson. William French. John Stoyte. Thomas Bolton. John Wendrich. Anthony Barker. William Quayle. Matthew Pearson. Ralph Coze. Thomas Wilkinson. Some

Some persons on the second Election of Alderman Barlow, were pleased to Insinuate, that the Electing Alderman Barlow a second time, was offering an Indignity to the Government and Council, than which nothing was more distant from the Inclinations and Design of the Ld. Mayor and Aldermen; who apprehended,

That *Electing* a second time, a Person against whom no Personal Objection was made by Alderman *Constantine's* Council, cou'd not be construed a Disrespect to the Council-Board; his first Disapprobation, not being grounded on any Dislike they had to the Person Elected, but on a Right or pretended Right set up in Alderman *Constantine* under colour of the Old By-Laws, which as they apprehended ceased, if any such Right he had, by the Repeal of those By-Laws or pretended By-Laws, previous to their proceeding to a second Election.

That several Instances can be given since the Revolution, where Persons Elected into the Magistracy of other Corporations have been at first Disapproved by the Government and Council, and were afterwards *Re-elected* by the corporation in the same Year, and returned a second time to the Council for their approbation: And in some cases that the Person Disapproved on the *first Election*, yet on his *Re-election* hath been approved by the Government and Council, which Precedents induced the Lord-Mayor and Aldermen to believe, that their *Electing* Alderman Barlow a second time, cou'd not admit of so severe a censure, especially considering that the Disapprobation was not grounded on any Personal Disability

Disability, or Insufficiency, but on a By-Law that was Repealed before the second Election of Alderman Barlow.

Alderman Barlow, and with him the two Sheriffs Elect, being a second time Disapproved, the Lord-Mayor and Aldermen deferred Proceeding to a third Election, till his Grace the Lord Lieutenant Landed, who about that time was on his Journey towards Ireland.

That some few Days after, the Lord-Mayor and Aldermen being obliged to proceed to a third Election, determined to decline Electing Mr. Alderman Barlow, as also his competitor Alderman Constantine, and were in hopes by Electing a third Person of known Loyalty and Probity, an end might be put to further Elections for the ensuing Year, and thereupon they chose Alderman Cooke Lord-Mayor (than whom no Member of the City is more unexceptionable in his character and other circumstances) and Mr. Thomas Bradshaw and Mr. John Nevil Sheriffs: But the Misfortune of the City was such, that their former Proceedings were so represented to his Grace (for their Case was never heard before his Grace) that it was thought fit to disapprove the last mentioned choice of Lord Mayor and Sheriffs.

Whereupon the Lord-Mayor and Aldermen finding the Election they made of their Brethren below the cushion, were not acceptable to the Council-Board, they resolved to Elect an Alderman above the cushion, who had formerly served, and received the Approbation of the Council-Board; and accordingly they Elected Alderman John Page, Lord-Mayor, and Mr.

James

James King, and Mr. John Wallis, Sheriffs. Alderman Page having twice before had the Approbation of the Government and Council in that Station, which Elections being certified to the Council-Table in the usual Form, met with the Fate of the former, so that the Lord-Mayor and Aldermen were necessitated to proceed a fifth time to Elect a Lord-mayor and Sheriffs, and then chose Alderman Quin Lord-mayor, & Mr. Edward Surdevile, Mr. William Aldridge, Sheriffs, who the same Day they were certified to the Council-Board, were Disapproved, since which time they have chosen Alderman Walton, a member of the Honourable House of Commons, Lord mayor, and John Bradshaw, and John Tisdall, Sheriffs, who as yet are not Approved or Disapproved.

That the Lord Mayor and Aldermen never heard that there hath been any Petition nor the least Objection against any one of the several Elected Sheriffs for the Entuing Year, yet Eight of them have been disapproved without being Summoned or heard, tho' their Offices are so distinct from that of the Mayors, that the one might be approved, tho' the other was Disapproved.

That the City are desirous to pay the utmost Deference to his Grace and the Privy-council, and to make any compliance consistent with their Right and Freedom of Election, and the Oaths they have taken to maintain the Rights of the City, but cannot consent to the making a Precedent, which in time to come, may be a means of turning their Right of Election into a Nomination of City Magistrates by another Board.

That the City of Dublin have been so careful in the Election of their Lord Mayors, that from the first making the new Rules in the Year 1672, till within a few Months past, no Person Elected Lord Mayor of the City of Dublin was ever Disapproved by the Government and Council, excepting one, who was rejected by the Lord Tyrconnel in 1687, to make room for Sir Thomas Hacket a Papist, who then succeeded in the Mayoralty of Dublin.

That although it can't be reasonably required from those who have a Right to Elect, to give all their Reasons in Print for their choosing one, or Rejecting another; yet to Convince such who without Prejudice, shall read this Case, that what the City has done, did not proceed from the least Disrespect or Opposition to the Government; it may not be amiss amongst others, to mention one, viz.

That the Lord Mayor and Aldermen are Satisfied; should Alderman Constantine be Elected Lord Mayor, he would use his utmost Endeavours to bring in Mr. Mercer to be one of the Sheriffs: And tho' he should fail in that attempt, yet the City know Mr. Constantine would still continue under the Influence and Direction of that Gentleman, with whom this City is Engaged in two or three Law Suits or Prosecutions, in order to restrain him from Erecting a Dangerous Monopoly of Coals in the City of Dublin, whereby the Numerous poor Traders and Artificers of Dublin are daily prejudiced.

